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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID FREDERICK BANTZ and QUENTIN A. GOUEDARD

Appeal 2007-3605
Application 09/788,071
Technology Center 2100

Decided: April 23, 2008

Before JAMES D. THOMAS, ALLEN R. MACDONALD, and ST. JOHN
COURTENAY III, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from a final rejection of claims 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48.

Claim 1 is exemplary:

1. A method of identifying objectionable content, comprising:

receiving requested content;

retrieving a user profile for a requesting user, wherein the user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content;

analyzing the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content;

determining a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content; and

storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.¹

The Examiner relies upon the following evidence in rejecting the claims on appeal:

Palmer	US 5,195,135	Mar. 16, 1993
Kirsch	US 6,772,196 B1	Aug. 03, 2004
		(filed Jul. 27, 2000)

¹ In our analysis, we refer to this step as the “storing step.”

[illegible]

Jelbert GB 2 347 053 A Aug. 23, 2000

Claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48² stand rejected as unpatentable under 35 U.S.C. § 103(a) over Hoffberg, Palmer, and Kirsch.³

Claims 4, 20, and 36⁴ stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoffberg, Palmer, Kirsch, and Jelbert.

We affirm.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Hoffberg

1. Hoffberg teaches a content filtering system that identifies particular types of content. (Col. 222, l. 49 – col. 223, l. 12 and abstract.)

Palmer

2. Palmer teaches a content filtering system that identifies and censors undesirable content according to multiple levels of censorship. (Col. 4, ll. 25-38.)

Kirsch

² We refer to all claims in this rejection as Group 1.

³ In our analysis, we refer to the combination of Hoffberg, Palmer, and Kirsch as the “combination.”

⁴ We refer to all claims in this rejection as Group 2.

3. Kirsch teaches retrieving inbound email from the internet. (Col. 6, ll. 46-64.)
4. Kirsch teaches generating a signature that represents content of a received email. (Col. 6, ll. 13-17.)
5. Kirsch teaches that signatures identify undesired content in received email. (Col. 1, ll. 34-35, col. 7, ll. 1-17, and col. 9, ll. 48-51.)
6. Kirsch teaches generating a similarity score between a signature of a received email and a signature that corresponds to undesired content. (Col. 7, ll. 1-17 and 40-47 and col. 16, ll. 18-29.)
7. Kirsch teaches determining how the similarity score compares to multiple threshold values. (Col. 7, ll. 40-47 and col. 16, ll. 30-55.)
8. Kirsch teaches storing the received email in hold queue 72 if the similarity score exceeds a particular one of the multiple threshold values. (*Id.*)

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’”

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

“[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *Id.* at 1740 (citing *Sakraida*, 425 U.S. 273, 282).

ANALYSIS

Group 1

Appellants group claims in Group 1 together under a separate heading and present the same arguments for all claims in this group. (App. Br. 10-14.) Therefore, we select claim 1 as the representative claim on which to decide the appeal of all claims in this group.

The Examiner concludes that the combination renders claim 1 obvious. (Ans. 3.) Appellants contend that the Examiner erred in concluding that the combination renders claim 1 obvious because (1) there is no motivation to combine the references in the combination to arrive at claim 1 and (2) the combination fails to teach the storing step. (App. Br. 10-14.)

Thus, the issues are whether Appellants have shown that the Examiner erred by (1) combining the teachings and suggestions of the references in the combination and (2) finding that the combination teaches the storing step.

Combinability

The Examiner finds reason to combine the teachings and suggestions of the references in the combination because each of the references in the

combination perform similar functions, namely, filtering content based on criteria and because incorporating the teachings of Kirsch permits review of filtered content. (Ans. 3, 4, 6, and 7.)

Appellants state that combining the teachings of the references in the combination to arrive at claim 1 would not have been obvious without prior knowledge of Appellants' claimed invention. (App. Br. 13.) However, such statement does not address the Examiner's proffered reasons for combining the teachings and suggestions of references in the combination (Ans. 3, 4, 6, and 7) and thus do not convince us that the Examiner's proffered reasons for combining the teachings and suggestions are insufficient and, accordingly, does not convince us that the Examiner engaged in impermissible hindsight reconstruction. We affirm the Examiner's finding to combine the teachings and suggestions of the references in the combination for the reasons provided by the Examiner (Ans. 3, 4, 6, and 7).

Moreover, we find that, at the time of the invention, there was sufficient reason to combine the teachings and suggestions of Hoffberg, Palmer, and Kirsch because combining (a) Hoffberg's content filtering system (FF 1) with (b) Palmer's content filtering system that censors undesirable content according to multiple levels of censorship (FF 2) and (c) Kirsch's content filtering system that stores objectionable content (FF 8) changed the functions of none of the combined features of (a), (b), and (c). *KSR*, 127 S. Ct. at 1740 (citing *Sakraida*, 425 U.S. 273, 282). Moreover, the

combination yielded no more than predictable results of identifying and storing objectionable content. *Id.*

Storing step

Appellants argue that the combination fails to teach the storing step because none of the references in the combination teaches storing *requested* content in a data structure if a score for the content is above a threshold. (App. Br. 11-13.) In particular, Appellants argue that the Examiner's reliance on Kirsch to teach storing requested content fails because Kirsch's system (1) filters and stores *unsolicited* email rather than *requested* content and (2) does not filter email requested by a user, even email with objectionable content. (*Id.*) The Examiner replies that Kirsch's email access program *requests* all email, whether solicited or unsolicited. (Ans. 6.) Moreover, the Examiner replies that Kirsch's system filters out email that contains undesirable content rather than filtering out unsolicited email. (*Id.*)

We agree with the Examiner (Ans. 4-7) and, for the following reasons, we find that Kirsch teaches storing *requested* content in a data structure if a score for the content is above a threshold. Kirsch teaches retrieving inbound email from the internet. (FF 3.) Contrary to Appellants' argument that Kirsch's system filters and stores unsolicited email rather than requested content (App. Br. 11-12), we find that Kirsch teaches retrieving inbound email encompasses retrieving requested content. We agree with the Examiner that when a user requests access to an email box, the user receives

requested content. (Ans. 6.) Moreover, we find that a received email that is a response to an email communication is *requested content*.

Contrary to Appellants' argument that Kirsch's system does not filter email requested by a user (App. Br. 11-12), we find that Kirsch teaches filtering requested email by teaching (i) analyzing whether a score for retrieved email is above a threshold (FF 7) and (ii) storing email with a score above a threshold in a queue (FF 8). We find that Kirsch's storing requested email in a queue in response to a score for the email being above a threshold teaches storing requested content in a data structure if a score for the content is above a threshold. Thus, we conclude that Appellants have not shown that the Examiner erred in finding that the combination teaches the storing step.

Appellants' arguments of an absence of suggestion to modify the references in the combination to arrive at the storing step (App. Br. 13) are fully addressed by our findings that the combination teaches the storing step.

Therefore, we conclude that Appellants have not shown that the Examiner erred in concluding that the combination renders obvious claim 1 and claims 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48.⁵

⁵ We note that claim 33 recites a "computer program product in a computer readable medium." Appellants' Specification provides examples of "computer readable media" that include wireless communications links using radio frequency and light wave transmissions. (Spec. 16:7-12.) Accordingly, we construe claim 33 to encompass wave forms.

Group 2

Appellants group claims in Group 2 together under a separate heading and present the same arguments for all claims in this group. (App. Br. 14.) Therefore, we select claim 4 as the representative claim on which to decide the appeal of all claims in this group.

The Examiner concludes that the combined teachings and suggestions of the combination with Jelbert render claim 4 obvious. (Ans. 5.) Appellants argue that the Examiner erred in concluding that claim 4 is obvious by virtue of its dependency on claim 1. (App. Br. 14.) In particular, Appellants argue that neither the combination nor Jelbert teaches the storing step.

We found *supra* with regard to claim 1 that Appellants have not shown that the Examiner erred in finding that the combination teaches the storing step. Thus, Appellants' argument that the combined teachings of Jelbert with those of the combination fail to teach the storing step is unpersuasive.

Therefore, we conclude that Appellants have not shown that the Examiner erred in concluding that the combined teachings and suggestions of the combination and Jelbert render obvious claim 4 and claims 20 and 36.

CONCLUSIONS OF LAW

We conclude that:

(1) Appellants have not shown that the Examiner erred in concluding that claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48 are unpatentable under 35 U.S.C. § 103(a) over Hoffberg, Palmer, and Kirsch;

(2) Appellants have not shown that the Examiner erred in concluding that claims 4, 20, and 36 are unpatentable under 35 U.S.C. § 103(a) over Hoffberg, Palmer, Kirsch, and Jelbert; and

(3) Claims 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48 are unpatentable.

DECISION

The Examiner's rejections of claims 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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